

TO GRANT THE CONSENT OF CONGRESS TO AN AMENDMENT TO THE
COMPACT BETWEEN THE STATES OF MISSOURI AND ILLINOIS PRO-
VIDING THAT BONDS ISSUED BY THE BI-STATE DEVELOPMENT AGENCY
MAY MATURE IN NOT TO EXCEED 40 YEARS

OCTOBER 25, 2011.—Referred to the House Calendar and ordered to be printed

Mr. SMITH, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.J. Res. 70]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the joint resolution (H.J. Res. 70) to grant the consent of Congress to an amendment to the compact between the States of Missouri and Illinois providing that bonds issued by the Bi-State Development Agency may mature in not to exceed 40 years, having considered the same, reports favorably thereon with an amendment and recommends that the joint resolution do pass.

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The Amendment

The amendment is as follows:

Strike all after the resolving clause and insert the following:

SECTION 1. CONSENT.

(a) IN GENERAL.—The consent of Congress is given to the amendment of the powers conferred on the Bi-State Development Agency by Senate Bill 758, Laws of Missouri 2010 and Public Act 96–1520 (Senate Bill 3342), Laws of Illinois 2010.

(b) EFFECTIVE DATE.—The amendment to the powers conferred by the Acts consented to in subsection (a) shall take effect on the date of enactment of this Act.

SEC. 2. RIGHT TO ALTER, AMEND, OR REPEAL.

The right to alter, amend, or repeal this joint resolution is expressly reserved.

SEC. 3. RESERVATION OF RIGHTS.

The right is reserved to Congress to require the disclosure and furnishings of such information or data by the Bi-State Development Agency as is deemed appropriate by Congress.

Purpose and Summary

Pursuant to Article I, Section 10, clause 3 of the Constitution, House Joint Resolution 70 gives Congressional approval to an amendment to the compact between the States of Missouri and Illinois, originally ratified on September 20, 1949, and subsequently approved by Congress. The amendment allows the Bi-State Development Agency to issue up to 40-year notes, bonds or other instruments in writing (“bonds”); the compact previously allowed the Agency to issue up to 30-year bonds.

Background and Need for the Legislation

The Constitution recognizes that states may make “agreements” or “compacts” with one another.¹ An interstate compact is essentially a contract between two or more states, which usually is made by the states enacting identical legislation setting forth the terms of the compact. Congressional consent is required when the compact encroaches on powers reserved to the Federal Government.² Once it is in force, a compact functions as a legally binding contract on the member states.³ A congressionally approved interstate compact trumps conflicting laws of the signatory states and has the force of Federal law.⁴

¹See U.S. CONST. art. I, §10, cl. 3 (“No State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State. . . .”).

²See, e.g., *Virginia v. Tennessee*, 148 U.S. 503, 519 (1893) (“[I]t is evident that the prohibition is directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States.”), quoted in *U.S. Steel Corp. v. Multistate Tax Comm’n*, 434 U.S. 452, 471 (1978) (“This rule states the proper balance between Federal and state power with respect to compacts and agreements among States.”).

³See, e.g., *Green v. Biddle*, 21 U.S. 1, 92–93 (1823) (“Kentucky, therefore, being a party to the compact which guarantied [sic] to claimants of land lying in that State, under titles derived from Virginia, their rights, as they existed under the laws of Virginia, was incompetent to violate that contract, by passing any law which rendered those rights less valid and secure.”); *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 28 (1951) (“But a compact is after all a legal document. . . . It requires no elaborate argument to reject the suggestion that an agreement solemnly entered into between States by those who alone have political authority to speak for a State can be unilaterally nullified, or given final meaning by an organ of one of the contracting States. A State cannot be its own ultimate judge in a controversy with a sister State.”).

⁴See *Cuyler v. Adams*, 449 U.S. 433, 440 (1981) (“But where Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the States’ agreement into Federal law under the Compact Clause.”) (citing, inter alia, *Dyer*, 341 U.S. at 26).

Until the early 20th Century, interstate compacts often were used to settle boundary disputes between states,⁵ but in recent years they also have addressed regional problems requiring inter-governmental cooperation. Today, there are approximately 200 active interstate compacts “cover[ing] a broad range of issues, from environmental and energy policy (39 compacts) to water allocation (38), traffic and transportation (28), crime control (16), and education (12), among other matters.”⁶ For example, the Washington Metropolitan Area Transit Authority, which runs the Metro system in the greater Washington, D.C. area, is the product of an interstate compact.⁷ In short, “[c]ompacts fit comfortably into the Federal scheme because they enable the states—in their sovereign capacity—to act jointly and generally outside the confines of the Federal legislative or regulatory process while concomitantly respecting the view of Congress on the appropriateness of joint action. Equally important, compacts effectively preempt Federal interference into matters that are traditionally within the purview of the states but have regional or national implications.”⁸

On September 20, 1949, Missouri and Illinois entered into a Compact that was approved by Congress on August 21, 1950, and signed by the President on August 31.⁹ Since then, Congress has approved amendments to the Compact on three occasions.¹⁰ The Compact created the Bi-State Metropolitan Development District in the St. Louis metropolitan area, and the Bi-State Development Agency to facilitate cooperation between the two states. For example, the Agency is the primary provider of public transportation in St. Louis. Among other facilities and projects, the Agency owns and operates a general aviation airport and operates (in cooperation with the National Park Service) the tram to the top of the Gateway Arch.

The Agency does not have taxing authority, but it may issue bonds. Construction of the Gateway Arch tram, for example, was financed by Agency-issued bonds. The Compact previously restricted the Agency from issuing bonds with a maturity period of longer than 30 years. Last year, however, Missouri and Illinois enacted legislation to amend the Compact and allow the Agency to issue bonds with maturity dates up to 40 years. In addition to other capital improvements, the Agency could use revenue from these 40-year bonds to support the “City-Arch-River 2015” initiative, a local development project designed to better integrate the

⁵See, e.g., Felix Frankfurter & James M. Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments*, 34 YALE L.J. 685, 692, 696 (May 1925) (The Compact Clause “is part and parcel of the long and familiar story of colonial boundary controversies. Almost all of the colonial charters, it will be recalled, were necessarily vague and expansive. They had to be applied to strange and ill-surveyed territory. We are also familiar with the surrender by the sea-board colonies of extravagant claims to remote stretches of the continent. . . . Boundary disputes . . . have been the most continuous occasions for invoking the Compact Clause.”).

⁶Michael S. Greve, *Compacts, Cartels, and Congressional Consent*, 68 MO. L. REV. 285, 288 (Spring 2003); see also National Center for Interstate Compacts, <http://www.csg.org/NCIC/default.aspx> (last accessed Oct. 17, 2011).

⁷See 89 P.L. 774, 80 Stat. 1324 (Nov. 6, 1966).

⁸Michael L. Buenger & Richard L. Masters, *The Interstate Compact on Adult Offender Supervision: Using Old Tools to Solve New Problems*, 9 ROGER WILLIAMS U. L. REV. 71, 91 (Fall 2003).

⁹See 81 P.L. 743, 64 Stat. 568.

¹⁰See H.R.J. Res. 465, 86th Cong., 73 Stat. 582 (Sept. 21, 1959); S.J. Res. 127, 99th Cong., 99 Stat. 477 (Sept. 30, 1985); H.R.J. Res. 78, 104th Cong., 110 Stat. 883 (Apr. 1, 1996).

Gateway Arch and the Jefferson National Expansion Memorial into the whole St. Louis metropolitan area.¹¹

Missouri and Illinois both have agreed to this amendment. On May 25, 2010, the Missouri General Assembly adopted Senate Bill 758, which the Governor signed on July 7. The Illinois General Assembly adopted Senate Bill 3342 on November 18, 2010, which the Governor signed February 4, 2011.

Representative Clay (D–MO) introduced House Joint Resolution 70 on June 24, 2011. All other St. Louis-area Members are co-sponsors: Representatives Akin (R–MO), Carnahan (D–MO) and Costello (D–IL) are original co-sponsors, and Representative Shimkus (R–IL) joined on September 13. Senator McCaskill (D–MO) introduced companion legislation on June 28, 2011. Senate Joint Resolution 22 is co-sponsored by Senators Blunt (R–MO), Durbin (D–IL) and Kirk (R–IL). On September 26, 2011, Senate Joint Resolution 22 was discharged from the Senate Committee on the Judiciary by unanimous consent, and passed the same day by the Senate without amendment and by unanimous consent.

Hearings

The Committee on the Judiciary held no hearings on House Joint Resolution 70.

Committee Consideration

On September 21, 2011, the Committee met in open session and ordered the resolution House Joint Resolution 70 favorably reported with amendments, by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee’s consideration of House Joint Resolution 70. The Committee adopted two amendments by voice vote. Amendment One, offered by Chairman Smith, changed the effective date in Section 1(b) from “December 17, 2010” to “the date of the enactment of this Act.” Amendment Two, offered by Mr. Sensenbrenner, struck the former Section 2 in its entirety.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

¹¹ See generally <http://www.cityarchriver.org/> (last accessed Oct. 17, 2011).

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the resolution, House Joint Resolution 70, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 30, 2011.

Hon. LAMAR SMITH, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

THE CONGRESSIONAL BUDGET OFFICE HAS PREPARED THE ENCLOSED COST ESTIMATE FOR H.J. RES. 70, A JOINT RESOLUTION TO GRANT THE CONSENT OF CONGRESS TO AN AMENDMENT TO THE COMPACT BETWEEN THE STATES OF MISSOURI AND ILLINOIS PROVIDING THAT BONDS ISSUED BY THE BI-STATE DEVELOPMENT AGENCY MAY MATURE IN NOT TO EXCEED 40 YEARS.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Martin von Gnechten, who can be reached at 226-2860.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.J. Res. 70—A joint resolution to grant the consent of Congress to an amendment to the compact between the states of Missouri and Illinois providing that bonds issued by the Bi-State Development Agency may mature in not to exceed 40 years.

H.J. Res. 70 would formally approve an amendment to an existing interstate compact between Illinois and Missouri. Currently, Illinois and Missouri cooperate through the Bi-State Development Agency for certain transportation projects around the St. Louis metropolitan area. Under current law, the maximum length of time for bonds issued by the agency to mature is 30 years. H.J. Res. 70 would consent to amending the existing compact so the agency can issue bonds that mature in 40 years or less.

CBO estimates that implementing the legislation would have no significant impact on the Federal budget. Enacting H.J. Res. 70 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.J. Res. 70 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

The CBO staff contact for this estimate is Martin von Gnechten. The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, House Joint Resolution 70 will give Congressional consent to an amendment to the compact between the State of Missouri and Illinois, which both states previously have ratified.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, House Joint Resolution 70 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

Section 1. Subsection (a) gives Congressional consent to an amendment to the Compact between the States of Missouri and Illinois. The underlying legislation, enacted by both states, would allow the Bi-State Development Agency to issue up to 40-year bonds. The Compact previously allowed the Agency to issue up to 30-year bonds. Subsection (b) sets the effective date as the date of enactment.

Section 2. This section expressly reserves to Congress the right to alter, amend, or repeal its consent to this amendment to the Compact.

Section 3. This section reserves to Congress oversight power of the Bi-State Development Agency.